

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AIU INSURANCE COMPANY,	§
INSURANCE COMPANY OF THE	§ No. 538, 2011
STATE OF PENNSYLVANIA,	§
LEXINGTON INSURANCE	§
COMPANY and NATIONAL	§ Court Below—Superior Court
UNION FIRE INSURANCE	§ of the State of Delaware
COMPANY OF PITTSBURGH,	§ in and for New Castle County
PA.,	§ C.A. No. 09C-01-170
	§
Defendants Below-	§
Appellants,	§
	§
v.	§
	§
AMERICAN GUARANTEE &	§
LIABILITY INSURANCE CO.,	§
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 31, 2011  
Decided: November 4, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 4<sup>th</sup> day of November 2011, it appears to the Court that:

(1) The defendants-appellants, AIU Insurance Company, et al. (“AIU”), filed an appeal from the Superior Court’s purportedly “final” order dated September 7, 2011 in this insurance coverage case. For the reasons that follow, we conclude that the appeal must be dismissed for the

appellants' failure to comply with Supreme Court Rule 42 when filing an appeal from an apparent interlocutory order.

(2) The record before us reflects that, following the filing of AIU's notice of appeal, the Clerk of the Court issued a notice directing AIU to show cause why the appeal should not be dismissed for failure to comply with Rule 42 when taking an appeal from an apparent interlocutory order.

(3) On October 21, 2011, AIU filed its response to the notice to show cause. In the response, AIU states that the Superior Court's September 7, 2011 order did not explicitly state that it was the Superior Court's final judgment in the matter. Neither was the order entered as a final judgment pursuant to Superior Court Civil Rule 54(b). AIU attaches copies of correspondence to its response reflecting that the Superior Court's "three most recent rulings" were "intended to put the matter in a procedural posture for an appeal."

(4) October 31, 2011 was the due date for the filing of appellee American Guarantee's reply to AIU's response to the notice to show cause. American Guarantee did not file a reply.

(5) Absent compliance with Rule 42, this Court's jurisdiction is limited to the review of final judgments of trial courts.<sup>1</sup> An order is deemed

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<sup>1</sup> *Julian v. State*, 440 A.2d 990, 991 (Del. 1982).

to be “final” if the trial court has clearly declared its intention that the order be the court’s “final act” in the case.<sup>2</sup> The record before us reflects that the Superior Court has not “clearly declared” its intention that its September 7, 2011 order is its final act in this case. An appeal to this Court from an apparent interlocutory order is premature absent compliance with Rule 42. In the absence of AIU’s compliance with Rule 42, we conclude that this appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that this appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>2</sup> *J.I. Kislak Mortgage Corp. v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).